

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 93-0252 CS

Controlled Substance Excise Tax

For Tax Period: January 7, 1993

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Controlled Substance Excise Tax – Imposition

Authority: IC 6-7-3-5; IC 6-7-3-6; IC 6-8.1-5-1

Taxpayer protests the imposition of the controlled substance excise tax.

STATEMENT OF FACTS

On January 7, 1993, taxpayer was arrested by the Seymour Police Department for possession of marijuana. The Department also assessed the controlled substance excise tax against the taxpayer on January 7, 1993. The assessment was based on a weight of 1,502.70 grams of marijuana. Taxpayer protested the assessment.

An administrative hearing was held on February 23, 1999. Additional relevant information will be provided below, as necessary.

I. Controlled Substance Excise Tax – Imposition

DISCUSSION

Indiana Code Section 6-7-3-5 states:

The controlled substance excise tax is imposed on controlled substances that are:

- (1) delivered,
- (2) possessed, or
- (3) manufactured;

in Indiana in violation of IC 35-48-4 or 21 U.S.C. 841 through 21 U.S.C. 852.

Pursuant to Indiana Code Section 6-7-3-6:

"The amount of the controlled substance excise tax is determined by:

- (1) the weight of the controlled substance. . ."

Taxpayer was arrested and the controlled substance excise tax was assessed based on 1,502.70 grams of marijuana.

At the administrative hearing the taxpayer argued the criminal charges stemming from this incident were dismissed. However, the Department's assessment is based on possession, delivery or manufacturing of a controlled substance. Criminal prosecution is not necessary

Pursuant to IC 6-8.1-5-1(b), "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made."

Taxpayer has failed to prove the assessment invalid.

FINDING

Taxpayer's protest is denied.

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